

REMARKS

The Examiner indicated that claims 10-21 were pending at the issuance of the instant Office Action. Claims 10-12 have been canceled, and claims 13-21 are amended. No new matter has been added as a result of the amendments. The rejections set forth in the Office Action have been overcome by amendment or are traversed by argument below.

1. Information Disclosure Statement

The Japanese foreign document JP2002-274077 is submitted herewith in entirety.

2. Amendments to the claims

Claims 13 and 15 are amended to more clearly define the subject matter of an immobilization layer formed on an anti-reflection layer, which is formed on a substrate. Support for the amendments may be found in the applicant's claims as filed and the specification as filed at page 8, lines 5-11 and in the Example 2 on pages 27-28, particularly page 28, lines 5-8. Support for the amendments to claims 14 and 16-21 may be found in the applicant's claims as filed.

3. Rejection of claims 10-21 under 35 U.S.C. § 112, second paragraph

Claims 10-12 have been canceled, rendering the rejections of these claims moot. Claims 13 and 15 are amended to more clearly define the subject matter of an immobilization layer formed on an anti-reflection layer, which is formed on a substrate. Support for the amendments may be found in the applicant's claims as filed and the specification as filed at page 8, lines 5-11 and in the Example 2 on pages 27-28, particularly page 28, lines 5-8. Support for the amendments to claims 14 and 16-21 may be found in the applicant's claims as filed. As now claimed, applicant asserts that it is now clear that the fine particle of claim 13 is included in the anti-reflection layer. Since claims 14, 16 -21 depend from either claim 13 or claim 15, these claims are now

definite.

4. Rejection of the claims under 35 U.S.C. § 102(b)

In the final rejection of claims 10-13 and 19-21 under 35 U.S.C. § 102(b), the Examiner has presented two new references, namely Giaever ('184) and Arnold ('908).

These references have not been cited in any previous information disclosure statement, nor have the claims been amended to require newly cited art. Therefore, applicant asserts that the action may not be made final since it includes a rejection based on newly cited art (see MPEP 706.07(a) Final Rejection, When Proper on Second Action). Notwithstanding, applicant provides the following response to the citation of Giaever ('184) and Arnold ('908) in the rejection of claims 13 and 19-21 under 35 U.S.C. § 102(b).

Giaever neither teaches nor discloses an immobilization layer, and certainly not the patterned immobilization layer of the applicant's invention. See, for example, applicant's specification, which describes at page 22, lines 5-10 that the immobilization layer permits a different surface free energy from the substrate surface. In fact Giaever teaches away from the applicant's claim 13, merely teaching a layer (12) on a substrate surface (11) to which layer globules (13) and biological particles (14) are adhered (see Giaever at column 2, lines 58-68). Rather than enabling the performing of many different assays simultaneously, the effect of the immobilization layer being formed in a pattern is to immobilize the probe molecule with a higher density, as compared to the case in which no immobilization layer is formed, thereby further increasing the analysis accuracy (see applicant's specification at page 4, lines 18-24).

Reference Arnold neither teaches nor suggests an immobilization layer.

Applicant respectfully contends therefore that claims 13 and 19-21 are novel over the newly cited references, and requests this ground of rejection be withdrawn.

5. Rejection of claims 14-15 under 35 U.S.C. § 103

The Examiner has also cited reference Giaever together with reference McGall

('087) in a rejection of claims 14-15. The subject matter of the rejected claims 14 and 15 is now embodied in currently amended claim 13. As stated above, Giaever neither teaches nor discloses the immobilization layer of the instant invention. There is no teaching in McGall to suggest a discreet immobilization layer, and certainly not the patterned immobilization layer of the applicant's invention. Once again, this reference teaches away from the applicant's specification since there is no suggestion in McGall of an immobilization layer permitting a surface free energy gradient (see applicant's specification, page 22, lines 5-10). McGall's teaching cannot be used to overcome the deficiency of Giaever to arrive at the arraying of probes in a pattern on the immobilization layer taught by the applicant's application.

Applicant respectfully requests therefore that this ground for rejection of claims 14-15 be removed.

CONCLUSION

Applicants respectfully contend that all conditions of patentability are met in the pending claims as amended. Allowance of the claims is thereby respectfully solicited.

If Examiner Lum believes it to be helpful, he is invited to contact the undersigned representative by telephone at (312) 408-2535.

Respectfully submitted,
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Dated: June 6, 2006

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